



Waste

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

Herbert Hoover Office Building
14th & Constitution Ave., NW
Washington DC 20230

OCT - 2 2000

Philip L. Rinaldi
President and Chairman
Mulberry Phosphates, Inc.
110 E. 59th Street
New York, New York 10022

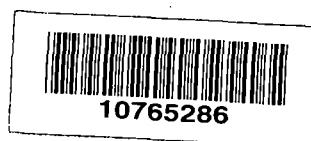
and

4000 Highway 60 E.
Mulberry FL 33860

Dear Mr. Rinaldi:

This letter serves to notify you that the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of the Interior (DOI) and the Florida Department of Environmental Protection (FDEP) consider Mulberry Phosphates, Inc. (MPI) responsible for the injury, loss or destruction of natural resources caused by the release of hazardous substances into the environment incident to a process water spill from MPI's facility in Mulberry, FL which occurred on December 7, 1997, and further, that these federal and state agencies intend to sue MPI in the U. S. District Court for the Middle District of Florida in order to recover natural resource damages as provided for under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq., as amended as well as other federal and state laws. This notice is provided to you pursuant to CERCLA §113(g)(1), 42 U.S.C. 9613(g)(1). A copy of this statutory provision is enclosed.

NOAA, DOI and FDEP are designated natural resource trustees under CERCLA, the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) Subpart G, 40 C.F.R. Sections 300.600 - 300.615. FDEP has additional authority under Chapters 376 and 403, Florida Statutes, and other applicable provisions of State law. As trustees, NOAA, DOI and FDEP are authorized thereunder to act on behalf of the public to assess and recover civil damages for natural resources which are injured, lost or destroyed as the result of hazardous substances released into the environment. Evidence available to NOAA, DOI and FDEP clearly indicates that MPI's December 1997 process water spill released one or more hazardous substances into the environment and that such release(s) caused injuries and losses of natural resources for which they are trustees under CERCLA and their other legal authorities. The natural resources and resource services affected by this spill and for which NOAA, DOI, and FDEP are seeking natural resource damages are described in the Draft Damage Assessment and Restoration Plan and Environmental Assessment for the December 7, 1997 Alafia River Spill (Draft DARP/EA), which document was released publicly in July 1999. The Draft DARP/EA contains substantial information on the assessment methods and restoration actions being used to assess natural resource damages for the subject spill event. The Draft DARP/EA was prepared by NOAA, DOI, FDEP, and two local county agencies as part of a joint and cooperative natural resource damage assessment process. Representatives of both MPI and its insurer, including legal and technical advisors and company officials, have actively participated in this assessment process, including during development and review of the Draft DARP/EA. Consequently, for this spill event, MPI stands well informed as to the foundation for the civil action for natural resource damages which is the subject of this CERCLA notice.




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If you believe that you have legal or factual information supporting the conclusion that MPI is not responsible for natural resource damages as a result of this spill event, you are requested to provide that information as soon as possible so that it can be considered before NOAA, DOI and FDEP proceed with the filing of the above referenced suit. Such information should be provided to NOAA by submission to Stephanie W. Fluke of NOAA's Office of General Counsel, to Harriet Deal of DOI's Solicitor's Office and to David Thulman of FDEP's Office of General Counsel.

Sincerely,



Craig O'Connor
Acting General Counsel

cc Richard Moore, Amundsen & Moore
C. T. Corporation, Florida Registered Agent
AIU Insurance Company
Timothy Fields, Jr., Assistant Administrator, U.S. EPA,
Office of Solid Waste & Emergency Response
Steven A. Herman, Assistant Administrator, U.S. EPA,
Office of Enforcement & Compliance Assurance
John H. Hankinson, Jr., Regional Administrator, U.S. EPA Region IV
Ann Hurley, DOJ
David Thulman, DEP
Stephanie Fluke, NOAA
Harriet Deal, DOI

42 § 9613
CERCLA § 113

(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before October 17, 1986.



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